



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: LVO - 203456

PRELIMINARY RECITALS

Pursuant to a petition filed on October 1, 2021, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA regarding Other, a hearing was held on December 2, 2021, by telephone.

Note: The administrative law judge took administrative notice of the Division of Hearings and Appeals' records regarding a related appeal filed by Petitioner on August 2, 2013 (Case No. LVO/151130); specifically, the procedural history and disposition of that case reflected in the Division of Hearings and Appeals' case management database and reflected on October 28, 2013.

The issue for determination is whether the agency correctly issued a levy for repayment of a public assistance debt.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 West Washington Avenue
Madison, WI 53703

By: [REDACTED], Program Supervisor, PACS
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 10, 2008, the agency mailed a Child Care (CC) Overpayment Notification to Petitioner which stated she had been overpaid \$24,012.61 in child care benefits from July 1, 2007 to January 31, 2008 due to client error, that she was liable to repay that amount, and that she could file a request for fair hearing.
3. Petitioner timely appealed the child care overpayment and a hearing was scheduled for May 5, 2008 (DHA Case No. CCO-40/93476).
4. Petitioner did not appear at the hearing scheduled for May 5, 2008; as a result, the Division of Hearings and Appeals issued a decision dated May 8, 2008 dismissing her appeal as abandoned. Petitioner did not request a rehearing or file a petition with circuit court regarding that dismissal. DHA Case No. CCO-40/93476 (Wis. Div. Hearings & Appeals May 8, 2008).
5. On June 2, 2009, July 2, 2009, and August 4, 2009, the agency sent Petitioner dunning notices to remind her that she needed to begin repaying the overpayment.
6. On or about July 26, 2013, the agency prepared and sent a notice to Petitioner indicating that a levy had been issued upon her property.
7. Petitioner filed a timely appeal following receipt of the July 2013 levy notice (DHA Case No. LVO/151130).
8. On October 28, 2013, Administrative Law Judge (ALJ) Mayumi Ishii issued a decision dismissing Petitioner's appeal and upholding the agency's July 2013 levy collection action. In her decision, ALJ Ishii noted that because Petitioner had not requested a rehearing regarding the May 8, 2008 dismissal of her child care overpayment appeal at any time during the five years that had passed since that date, the Division of Hearings and Appeals no longer had jurisdiction to address the merits of the overpayment. DHA Case No. LVO/151130 (Wis. Div. Hearings & Appeals October 28, 2013).
9. Petitioner did not file a request for rehearing regarding the October 28, 2013 decision issued by ALJ Ishii.
10. On January 6, 2021, the agency issued a Notice Prior to Levy – Payment Demand to Petitioner informing her that she owed \$23,142.65, that her overpayment debt was delinquent, and that failure to respond to the payment demand may result in a levy against all personal property including wages or bank accounts.
11. On or about September 25, 2021, the agency sent Petitioner a notice advising her that a levy had been issued. That notice advised her of her right to file an appeal with the Division of Hearings and Appeals. (Testimony of Petitioner).
12. As of November 22, 2021, the outstanding balance on the overpayment claim was \$23,038.15.
13. On October 1, 2021, Petitioner filed another request for hearing regarding seeking review of both the child care overpayment and the most recent levy action.

DISCUSSION

Petitioner seeks review of both child care overpayment claim established in April 2008 and a levy action issued by the agency in September 2021. Petitioner previously requested that the Division of Hearings and Appeals review the child care overpayment claim on two occasions – in May 2008, shortly after the claim was established, and again in July 2013, shortly after the agency issued a levy to recoup a portion of the

overpayment by garnishing the wages of a job she then held. As recounted in the Findings of Fact, the Division of Hearings and Appeals dismissed the appeal of the overpayment on May 8, 2008 based on a finding that she abandoned that appeal and, on October 28, 2013), the Division of Hearings and Appeals issued a decision upholding the agency's September 2013 levy action and declining to hear Petitioner's appeal of the overpayment, which was found to be untimely. Petitioner did not request a rehearing of either of those decisions.

The doctrine of claim preclusion provides that "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550, 525 N.W.2d 723 (1995).

Based on the doctrine of claim preclusion, Petitioner's current request that the Division of Hearings and Appeals review the child care overpayment claim established in May 2008 after the Division already twice declined to do so must be dismissed. Petitioner's appeal of the agency's September 2021 levy action is however timely.

Where an individual is subject to a specified overpayment of public assistance, a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Admin. Code, §DCF 101.23(4). One method of collection that the department may utilize is a levy under Wis. Stat., §49.195 (3N).

Wis. Admin. Code §DCF 101.23(10)(b) provides as follows: "1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending and the time for requesting a review has expired, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt." Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. §DCF 101.23(10)(e).

Since I cannot review the overpayment action, the issue on this appeal is limited to questions of prior payment of the debt or mistaken identity of the debtor. The agency substantiated the delinquency of the debt in question by offering copies of a repayment notice and three dunning notices sent to Petitioner as well as a copy of agency records showing Petitioner's repayment history. There was no dispute presented regarding the Petitioner's identity or the outstanding balance of the debt.

I conclude the agency has the authority to recover the unpaid child care overpayment through a levy action.

CONCLUSIONS OF LAW

1. The Petitioner's appeal is not timely regarding the overpayment action.
2. The Petitioner's appeal is timely regarding the September 2021 levy action.
3. The agency is authorized to recover the unpaid public assistance debt through a levy action.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

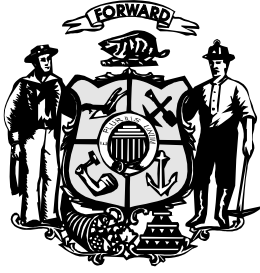
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 West Washington Avenue, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of January, 2022


/s

Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 18, 2022.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit